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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,398	11/29/2001	Teresa J. Bandosz	2830/1H701US1	2434
7278	7590	05/21/2004		
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			EXAMINER HENDRICKSON, STUART L	
			ART UNIT	PAPER NUMBER
			1754	

DATE MAILED: 05/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09199739E

Applicant(s)

Bando sz

Examiner

Wendick sm

Group Art Unit

1154

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 5/5/04
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-28 is/are pending in the application.
- Of the above claim(s) 11-28 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-10 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-28 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

There is insufficient disclosure of a two-component composition. There is insufficient disclosure of a nitrogen-bearing porous carbon, save the description of the materials made by Calgon Corp.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Khalili et al. 6030922 taken with Matviya et al. 5356849.

This is the same rejection previously made, incorporated herein by reference.

Claims 1-10 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lewis 4122036 or Khalili.

The references pyrolyze sludge. No difference is seen between the resulting compositions versus specification pg. 42.

Applicant's arguments filed 5/5/04 have been fully considered but they are not persuasive.

The disclosure is not sufficient to support the claims; it is not seen how it can be stated that the lesser ingredient has incorporated nitrogen, when the product was made by heating a single material. Also, at minimum it appears that claim 1 should be written to

indicate that the two components are different, if that is what is meant. Arguments to the 103 rejection are not persuasive since the claims do not exclude active carbon (see specification pg. 42); a different reason for making the same product does not impart patentability (In re Dillon 16 USPQ 2d 1897) and argument as to process steps are not germane to product claims. The references treat sludge, just as applicants do, and make a product. No differences are seen. Applicant starts with high-organic sludge, as do Lewis and Kahilili. So there is no reason to believe that the product would be different. That Lewis teaches embodiments that probably do not anticipate the claims does not detract from the teachings of those embodiments which do appear to. The compositions of the references versus the claims should be compared in a side-by-side showing, and claims limited to differences demonstrated.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

The references of record not applied above are considered pertinent to the claims.

Any inquiry concerning this communication should be directed to examiner Hendrickson at telephone number (571) 272-1351.



Stuart Hendrickson
examiner Art Unit 1754